
Before J.S. Narang, J.

SURJIT KAUR AND ANOTHER,—*Petitioners*

versus

AMARJIT KAUR AND OTHERS,—*Respondents*

C.M. No. 11428/CII/2002

IN C.R. No. 2819 of 2002

31st May, 2002

Code of Civil Procedure, 1908—S. 151—Application for stay filed alongwith the petition pending—Second application for the same relief filed—Whether maintainable—Held, no—Absence of the counsel from the Court on account of the strike of lawyers—No ground to constitute a cause for indulgence from the judicial forum and also violative of the law laid down by Hon'ble Apex Court—Second application for stay liable to be dismissed.

Held, that granting indulgence to a counsel being absent from the hearing before the Court on account of strike would also in a way amount to contribution towards the contempt of the apex Court. It shall be apposite to observe that giving any kind of indulgence to the applicant or to the counsel on account of absence of the counsel having participated in a strike of the lawyers shall be clear violation of the law laid down by the Apex Court. Thus, I am afraid this ground is not available to anyone, neither to the counsel nor to the applicant.

(Para 5)

Further held, that the learned counsel has also not been able to show any case law to the effect that despite the previous application being pending, a second application is maintainable, and the relief is claimable accordingly. Thus, the application merits dismissal. I order accordingly.

(Para 6)

M.S. Khaira, Senior advocate with Mukesh Gandhi, Advocate,
for the Petitioner.

JUDGMENT

(1) Admittedly the revision petition was posted for motion hearing on May 24, 2002. On that date, no one appeared on behalf of the petitioner neither the petitioner was present in person. However, in the interest of justice the hearing has been adjourned to October 4, 2002. It is borne out from the facts of the case that an application for obtainment of interim order has also been filed alongwith the appeal meaning thereby the said application also stands posted for hearing on the date as aforesaid.

(2) The present application has been filed for obtainment of similar interim order as prayed for in the previous application. Learned counsel for the applicant-petitioner has not been able to show as to how second application is maintainable for the interim order when the first application is still pending and is sub-judice. It is averred in the application that the trial Court has granted time for obtainment of stay order from this Court, otherwise the case would be proceeded with by the trial Court, to substantiate this plea, no order of the trial Court has been produced on record.

(3) It is also averred in para No. 1 of the application that the counsel could not appear on account of the strike of lawyers on May 24, 2002 i.e. they had abstained from appearing in Court on that date. I am afraid this action cannot constitute a cause for indulgence from the judicial forum.

(4) It shall be apposite to notice the law laid down by the Hon'ble Supreme Court in re : **Remson Services Pvt. Ltd.** versus **Subhash Kapoor and others (1)**, wherein the relevant para reads as under :—

“30. Though a matter of regret, yet it is a fact, that the courts in the country have been contributory to the continuance of the strikes on account of their action of sympathising with the Bar and failing to discharge their legal obligations obviously under the threat of public frenzy and harassment by the striking advocates. I find myself in agreement with the submission of Shri M.N. Krishnamani, Senior Advocate that the courts

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were sympathising with the Bar by not agreeing to dismiss the cases for default of appearance of the striking advocates. I have my reservations with the observations of Thomas, J. that the courts had not been sympathising with the Bar during the strikes or boycotts. Some courts might have conducted the cases even during the strike or boycott periods or adjourned due to helplessness for not being in a position to decide the list in the absence of the counsel but majority of the courts in the country have been impliedly sympathisers by not rising to the occasion by taking a positive stand for the preservation of the high traditions of law and for continued restoration of the confidence of the common man in the institution of judiciary. It is not too late even now for the courts in the country to rise from the slumber and perform their duties without fear or favour particularly after the judgment of this Court in *Mahabir Singh case*. Inaction will surely contribute to the erosion of ethics and values in the legal profession. The defaulting courts may also be contributory to the contempt of this Court.”

and also in re : *Mahabir Parsad Singh* versus *Jacks Aviation Pvt. Ltd.* (2), wherein the relevant para reads as under :—

“18. Of course, it is not a unilateral affair. There is a reciprocal duty for the court also to be courteous to the members of the Bar and to make every endeavour for maintaining and protecting the respect which members of the Bar are entitled to have from their clients as well as from the litigant public. Both the Bench and the Bar are two inextricable wings of the judicial forum and therefore the aforesaid mutual respect is the sine qua non for the efficient functioning of the solemn work carried on in courts of law. But that does not mean that any advocate or a group of them can boycott the courts or any particular court and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appear in that court.”

(5) Thus, in view of the aforesaid dicta of the apex Court granting indulgence to a counsel being absent from the hearing before the Court on account of strike, would also in a way amount to contribution towards the contempt of the apex Court. It shall be apposite to observe that giving any kind of indulgence to the applicant or to the counsel on account of absence of the counsel having participated in a strike of the lawyers shall be clear violation of the law laid down by the apex Court. Thus, I am afraid this ground is not available to anyone, neither to the counsel nor to the applicant.

(6) However, the learned counsel for the applicant has also not been able to show any case law to the effect that despite the previous application being pending, a second application is maintainable and the relief is claimable accordingly. Thus, the application merits dismissal. I order accordingly.

(7) It may be clarified that the dismissal of this application shall not affect the rights of the applicant while considering the application already filed with the main case.

R.N.R.

Before Swatanter Kumar & S.S. Saron, JJ.

KULDEEP SINGH,—Petitioner

versus

STATE OF HARYANA & OTHERS,—Respondents

C.W.P. 1640 of 2002

24th October, 2002

Constitution of India, 1950—Art. 226—Haryana Civil Services Judicial Branch Rules—Rl. 8 (as amended)—Recruitment to the H.C.S. (J.B.)—Govt. notifying six posts for General category candidates—Amended Rl. 8 fixing the number of five additional names which can be sent to the High Court for filling up of unforeseen vacancies that may occur within one year from the date of selection of candidates—Period of one year commences from the date the result of the selected candidates is published in the official gazette—H.P.S.C. recommending names of successful candidates—Petitioner at Sr. No.